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SENT. - 10/20/98

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TO: All CDD Legal Staff

FROM: Susan Hendricks
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RE: "Jenna's Law" & Other New Legislation

"Jenna's Law," which increases the sentences for violent felony offenders, was the most important piece of criminal legislation enacted during the recent legislative session. (The expanding complexity of New York's sentencing law as a result of this legislation, the 1995 Sentencing Reform Act and a host of sentencing enhancements and limitations is readily apparent by reviewing the enclosed sentencing chart, which together with its 76 footnotes, appeared in today's *New York Law Journal*.) The legislative session also expanded the scope of several existing penal statutes, and create a number of new crimes. The most significant of these Penal Law amendments include designation of criminal possession of a weapon on school grounds as a "J.O." offense for which children aged 14 or 15 can be prosecuted; expansion of the provisions in Penal Law Article 270 which penalize drug sales on school grounds to cover sales near day care centers and nursery schools; and creation of new crimes concerning endangering the welfare of a vulnerable elderly or physically disabled person. The Legislature also amended the Criminal Procedure Law to clarify a court's authority to place a defendant on interim probation between conviction and sentence, and to authorize a court to issue a final order of protection in favor of a prosecution witness. These and other changes are summarized in this memo. The full text of "Jenna's Law" is also provided, and follows this memorandum, along with the afore-mentioned sentencing chart.

"JENNA'S LAW"

"Jenna's Law" has already been signed into law by Governor Pataki and will apply to sentences imposed on all defendants convicted of violent felonies committed on or after September 1, 1998. It establishes a system of determinate sentencing for first-offenders who receive prison terms for "violent" felonies, although it does preserve the present non-prison

alternatives for first offenders convicted of Class D and E violent felonies.¹ Like repeat offenders who are subjected to determinate sentences under the 1995 "Sentence Reform Act," first offenders sentenced under "Jenna's Law" will have to serve 6/7ths of their prison terms before being conditionally released. Significantly, although "Jenna's Law" has been popularly described as a bill which eliminates parole, in fact it creates a new period of "post-release supervision" that henceforth must be imposed by the court upon all violent offenders -- first offenders as well as predicates -- as part of the sentence. This supervision sentence is virtually indistinguishable from parole in most respects, and in fact is served under the supervision of the Division of Parole.

Prison Terms for 1st Offenders Convicted of Violent Felonies

Prison sentences imposed upon first offenders convicted of violent felonies must be determinate, calculated in whole or half years. The maximum ranges have not been reduced for first offenders, and as a result, it is possible for a first offender to receive a prison term that is just as long as that imposed upon a repeat violent felony offender. The minimum terms, however, are lower than those for predicates.

SENTENCES: 1ST VFO²

	<u>Minimum</u>	<u>Maximum</u>
Class B violent:	5 years	25 years
Class C violent:	3½ years	15 years
Class D violent:	2 years	7 years
Class E violent:	1½ years	4 years

Post-Release Supervision Sentence

"Jenna's Law" requires that all violent offenders sentenced to determinate terms of incarceration for crimes committed after September 1, 1998, also receive an additional "post-release supervision sentence." This supervision sentence commences upon discharge from

¹ See 1998 N.Y. Laws, Chap. 1 (cited hereafter as the "Act"), §§ 3, 4, 6 & 9 [amending, respectively, P.L. §§ 70.00(3)(b) & (6), 70.02(2) & (4)]. "Jenna's Law" also preserves the option of indeterminate sentencing for domestic violence victims who are convicted of violent crimes against their abusers. See page 4, *infra*.

² Act, §7 [amending P.L. § 70.02(3)].

prison.³

For **predicate offenders** convicted of a violent felony, the period of post-release supervision must be **5 years**.⁴ For first offenders convicted of a violent felony, the court has discretion to set the term of supervision, in whole or half years, within a specified range:

POST-RELEASE SUPERVISION SENTENCES: 1ST VFO

	<u>Minimum</u>	<u>Maximum</u>
Class B or C violent:	2½ years	5 years
Class D or E violent:	1½ years	3 years

When discussing this supervision sentence with clients, you should alert them to the fact that the Board of Parole is specifically authorized to require that an inmate who is released from prison on post-release supervision immediately enter a residential drug treatment facility for up to 6 months.⁵ For clients receiving relatively short determinate sentences, this additional period of confinement can significantly lengthen the total period of incarceration.⁶

They should also be alerted to the fact that the statute requires that any time assessment imposed for a violation of post-release supervision be a **minimum** of 6 months, commencing upon the finding of guilt at the final hearing.⁷ Thus, any time spent in custody prior to the hearing will not be credited toward the time assessment. It will, however, be credited toward the undischarged term of the sentence [*i.e.*, the unserved 1/7th of the sentence], and once that has been satisfied, to the remaining period owed to supervision.⁸

³ Id., § 15 (creating new P.L. §70.45).

⁴ Id., P.L. §70.45(2).

⁵ Id., P.L. §70.45(3).

⁶ For example, an inmate who was sentenced to a determinate term of two years (24 months), followed by a 3-year term of post-release supervision, would be entitled to release after serving slightly more than 21 months. If the Board of Parole imposed a 6-month period of residential drug treatment, however, he would not be able to return home until he had spent more than 27 months in confinement.

⁷ Id., P.L. §70.45(1). The Act authorizes re-incarceration for as long as the unserved balance of the parole supervision sentence.

⁸ Id., P.L. 70.45(5)(d).

Inmates who are subject to multiple terms of post-release supervision must satisfy the period which has the longest unexpired term to run.⁹ Thus, a person who commits a violent felony while on post-release supervision will not have the unexpired term of supervision tacked on to the new supervision sentence that he must serve after he serves the new determinate sentence.

However, when a person is subject to both a post-release supervision sentence and a period of parole on an indeterminate sentence, the terms merge. If the unexpired parole term is longer than the term of post-release supervision, the person must first satisfy the post-release supervision, and then complete the undischarged parole term.¹⁰

Domestic Violence Exception to Determinate Sentencing

REDACTED

⁹ Id., P.L. §70.45(5)(c).

¹⁰ Id., P.L. §70.45(5)(b).

REDACTED

REDACTED

PENAL LAW AMENDMENTS

Drug Sales Near Day Care Centers

Chap. 289 (S.2402-a); effective September 1, 1998

REDACTED

REDACTED

New J.O. Crime — Possession of Gun on School Grounds
Chap. 435 (S.6243); effective Nov. 1, 1998

REDACTED

Possession of a Disguised Gun
Chap. 378 (A.10920); effective Nov. 1, 1998

REDACTED

Assault on an E.R. Worker

Chap. 287 (S.1143-a); effective Nov. 1, 1998

REDACTED

Failure to Control an Animal

Chap. 269 (A.9252-a); effective Nov. 1, 1998

REDACTED

Criminal Sale of a Firearm — Upgrades

A.6246-A; not signed as of 8/20/98; would go into effect Nov. 1, 1998

REDACTED

Endangering the Welfare of a Vulnerable Elderly Person

S.337-R; not signed as of 8/20/98; would go into effect Nov. 1, 1998

REDACTED

Day Care Crimes

S. 6781-c; not signed as of 8/20/98; would go into effect Nov. 1, 1998

REDACTED

CRIMINAL PROCEDURE LAW AMENDMENTS

Interim Probation Supervision

Chap. 159 (S.3781); effective Oct. 5, 1998

REDACTED

Faxed Statements Admissible in the Grand Jury

Chap. 360 (A.1829-a); ; effective Nov. 1, 1998

REDACTED

REDACTED

Orders of Protection for Witnesses

S. 6785; not signed as of 8/20/98; would go into effect upon signature

REDACTED

Out-of-State Orders of Protection: Full Faith & Credit

S.7589-a; not signed as of 8/20/98; would go into effect 90 days after signature

REDACTED

REDACTED

S7820 VOLKER Chapter 1 Approval Message 25

STATE OF NEW YORK

7820

IN SENATE

June 18, 1998

Introduced by Sens. VOLKER, DeFRANCISCO, BRUNO, ALES, BALBONI, COOK, FARLEY, FUSCHILLO, GOODMAN, HANNON, HOLLAND, JOHNSON, KUHL, LACK, LARKIN, LAVALLE, LEIBELL, LIBOUS, MALTESE, MARCELLINO, MARCHI, MAZIARZ, MEIER, NOZZOLIO, PADAVAN, PRESENT, RATH, SALAND, SEWARD, SKELOS, SPANO, STAFFORD, TRUNZO, VELELLA, WRIGHT — (at request of the Governor) — read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, the executive law and the criminal procedure law, in relation to eliminating parole for first-time violent felony offenders; establishing periods of post-release supervision for violent felony offenders; and providing for victim notification of certain inmate releases, and to repeal subdivision 4 of section 70.02 of the penal law and section 149-a of the correction law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The penal law is amended by adding a new section 60.12 to
- 2 read as follows:
- 3 § 60.12 Authorized disposition; alternative indeterminate sentence of
- 4 imprisonment domestic violence cases.
- 5 1. Notwithstanding any other provision of law, where a court is impos-
- 6 ing sentence pursuant to section 70.02 upon a conviction for an offense
- 7 enumerated in subdivision one of such section, other than an offense
- 8 defined in article one hundred thirty of this chapter, and is authorized
- 9 or required pursuant to such section to impose a determinate sentence of
- 10 imprisonment for such offense, the court, upon a determination following
- 11 a hearing that (a) the defendant was the victim of physical, sexual or
- 12 psychological abuse by the victim or intended victim of such offense,
- 13 (b) such abuse was a factor in causing the defendant to commit such
- 14 offense and (c) the victim or intended victim of such offense was a
- 15 member of the same family or household as the defendant as such term is
- 16 defined in subdivision one of section 530.11 of the criminal procedure
- 17 law, may, in lieu of imposing such determinate sentence of imprisonment,
- 18 impose an indeterminate sentence of imprisonment in accordance with
- 19 subdivisions two and three of this section.

EXPLANATION—Matter in italics (underscored) is new; matter in brackets

[] is old law to be omitted.

Page 2

1 2. The maximum term of an indeterminate sentence imposed pursuant to
2 subdivision one of this section must be fixed by the court as follows:
3 (a) For a class B felony, the term must be at least six years and must
4 not exceed twenty-five years;
5 (b) For a class C felony, the term must be at least four and one-half
6 years and must not exceed fifteen years;
7 (c) For a class D felony, the term must be at least three years and
8 must not exceed seven years; and
9 (d) For a class E felony, the term must be at least three years and
10 must not exceed four years.
11 3. The minimum period of imprisonment under an indeterminate sentence
12 imposed pursuant to subdivision one of this section must be fixed by the
13 court at one-half of the maximum term imposed and must be specified in
14 the sentence.
15 § 2. Paragraph (b) of subdivision 3 of section 70.00 of the penal
16 law, as amended by chapter 3 of the laws of 1995, is amended to read as
17 follows:
18 (b) [Where the sentence is for a violent felony offense as defined in
19 subdivision one of section 70.02, the minimum period shall be fixed by
20 the court pursuant to subdivision four of section 70.02.] Where the
21 sentence is for a class B felony offense specified in subdivision two of
22 section 220.4, the minimum period must be fixed by the court at one-
23 third of the maximum term imposed and must be specified in the sentence.
24 Where the sentence is for any other felony, the minimum period shall be
25 fixed by the court and specified in the sentence and shall be not less
26 than one year nor more than one-third of the maximum term imposed.
27 § 3. Subdivision 4 of section 70.00 of the penal law, as amended by
28 chapter 238 of the laws of 1983, is amended to read as follows:
29 4. Alternative definite sentence for class D, E, and certain class C
30 felonies. When a person, other than a second or persistent felony
31 offender, is sentenced for a class D or class E felony, or to a class C
32 felony specified in article two hundred twenty or article two hundred
33 twenty-one, and the court, having regard to the nature and circumstances
34 of the crime and to the history and character of the defendant is of
35 the opinion that a sentence of imprisonment is necessary but that it
36 would be unduly harsh to impose an indeterminate or determinate
37 sentence, the court may impose a definite sentence of imprisonment and
38 fix a term of one year or less.
39 § 4. Subdivision 6 of section 70.00 of the penal law, as added by
40 chapter 3 of the laws of 1995, is amended to read as follows:
41 6. Determinate sentence. [When] Except as provided in subdivision four
42 of this section and subdivisions two and four of section 70.02, when a
43 person is sentenced as a violent felony offender pursuant to section
44 70.02 or as a second violent felony offender pursuant to section 70.04
45 or as a second felony offender on a conviction for a violent felony
46 offense pursuant to section 70.06, the court must impose a determinate
47 sentence of imprisonment in accordance with the provisions of such
48 sections and such sentence shall include, as a part thereof, a period of
49 post-release supervision in accordance with section 70.45.
50 § 5. Paragraph (a) of subdivision 2 of section 70.02 of the penal law,
51 as amended by chapter 3 of the laws of 1995, is amended to read as
52 follows:
53 (a) Except as provided in subdivision six of section [70.00] 60.05,
54 the sentence imposed upon a person who stands convicted of a class B or
55 class C violent felony offense must be [an indeterminate] a determinate
56 sentence of imprisonment which shall be in whole or half years. [Except

Page 3

1 ~~as provided in subdivision six of section 60.05, the maximum]~~ The term
 2 of such sentence must be in accordance with the provisions of subdivi-
 3 sion three of this section ~~[and the minimum period of imprisonment under~~
 4 ~~such sentence must be in accordance with subdivision four of this~~
 5 ~~section].~~

6 § 6. Paragraphs (b) and (c) of subdivision 2 of section 70.02 of the
 7 penal law, as amended by chapter 291 of the laws of 1993, are amended to
 8 read as follows:

9 (b) Except as provided in subdivision ~~[five]~~ six of section 60.05 and
 10 subdivision four of this section, the sentence imposed upon a person who
 11 stands convicted of a class D violent felony offense, other than the
 12 offenses of criminal possession of a weapon in the third degree as
 13 defined in subdivisions four and five of section 265.02 and criminal
 14 sale of a firearm in the second degree as defined in section 265.12,
 15 must be in accordance with the applicable provisions of this chapter
 16 relating to sentencing for class D felonies ~~provided, however, that~~
 17 where a sentence of imprisonment is imposed which requires a commitment
 18 to the state department of correctional services, such sentence shall be
 19 a determinate sentence in accordance with paragraph (c) of subdivision
 20 three of this section.

21 (c) Except as provided in subdivision six of section 60.05, the
 22 sentence imposed upon a person who stands convicted of the class D
 23 violent felony offenses of criminal possession of a weapon in the third
 24 degree as defined in subdivisions four and five of section 265.02, or
 25 criminal sale of a firearm in the second degree as defined in section
 26 265.12 or the class E violent felonies of attempted criminal possession
 27 of a weapon in the third degree as defined in subdivisions four and five
 28 of section 265.02 must be a sentence to ~~[an indeterminate]~~ a determinate
 29 period of imprisonment, or, in the alternative, a definite sentence of
 30 imprisonment for a period of no less than one year, except that:

31 (i) the court may impose any other sentence authorized by law upon a
 32 person who has not been previously convicted in the five years imme-
 33 diately preceding the commission of the offense for a class A misdemea-
 34 nor defined in this chapter, if the court having regard to the nature
 35 and circumstances of the crime and to the history and character of the
 36 defendant, finds on the record that such sentence would be unduly harsh
 37 and that the alternative sentence would be consistent with public safety
 38 and does not deprecate the seriousness of the crime; and

39 (ii) the court may apply the provisions of paragraphs (b) and (c) of
 40 subdivision ~~[five]~~ four of this section when imposing a sentence upon a
 41 person who has previously been convicted of a class A misdemeanor
 42 defined in this chapter in the five years immediately preceding the
 43 commission of the offense.

44 § 7. Subdivision 3 of section 70.02 of the penal law, as amended by
 45 chapter 233 of the laws of 1980, is amended to read as follows:

46 3. ~~[Maximum-term]~~ Term of sentence. The ~~[maximum]~~ term of ~~[an indeter-~~
 47 ~~minate]~~ a determinate sentence for a violent felony offense must be
 48 fixed by the court as follows:

49 (a) For a class B felony, the term must be at least ~~[six]~~ five years
 50 and must not exceed twenty-five years; ~~[and]~~

51 (b) For a class C felony, the term must be at least ~~[four]~~ three and
 52 one-half years and must not exceed fifteen years[.];

53 (c) For a class D felony, the term must be at least two years and must
 54 not exceed seven years; and

55 (d) For a class E felony, the term must be at least one and one-half
 56 years and must not exceed four years.

Page 4

1 § 8. Subdivision 4 of section 70.02 of the penal law is REPEALED.

2 § 9. Subdivision 5 of section 70.02 of the penal law, as amended by
3 chapter 233 of the laws of 1980, paragraph (b) as amended by chapter 291
4 of the laws of 1993, is amended to read as follows:

5 [5.] 4. (a) Except as provided in paragraph (b) of this [section]
6 subdivision, where a plea of guilty to a class D violent felony offense
7 is entered pursuant to section 220.10 or 220.30 of the criminal proce-
8 dure law in satisfaction of an indictment charging the defendant with an
9 armed felony, as defined in subdivision forty-one of section 1.20 of the
10 criminal procedure law, the court must impose ~~[an indeterminate]~~ a
11 determinate sentence of imprisonment ~~[pursuant to section 70.00]~~.

12 (b) In any case in which the provisions of paragraph (a) ~~[hereof]~~ of
13 this subdivision or the provisions of subparagraph (ii) of paragraph (c)
14 of subdivision two of this section apply, the court may impose a
15 sentence other than ~~[an indeterminate]~~ a determinate sentence of impi-
16 sonment, or a definite sentence of imprisonment for a period of no less
17 than one year, if it finds that the alternate sentence is consistent
18 with public safety and does not deprecate the seriousness of the crime
19 and that one or more of the following factors exist:

20 (i) mitigating circumstances that bear directly upon the manner in
21 which the crime was committed; or

22 (ii) where the defendant was not the sole participant in the crime,
23 the defendant's participation was relatively minor although not so minor
24 as to constitute a defense to the prosecution; or

25 (iii) possible deficiencies in proof of the defendant's commission of
26 an armed felony.

27 (c) The defendant and the district attorney shall have an opportunity
28 to present relevant information to assist the court in making a determi-
29 nation pursuant to paragraph (b) ~~[hereof]~~ of this subdivision, and the
30 court may, in its discretion, conduct a hearing with respect to any
31 issue bearing upon such determination. If the court determines that ~~[an~~
32 indeterminate] a determinate sentence of imprisonment should not be
33 imposed pursuant to the provisions of such paragraph (b), it shall make
34 a statement on the record of the facts and circumstances upon which such
35 determination is based. A transcript of the court's statement, which
36 shall set forth the recommendation of the district attorney, shall be
37 forwarded to the state division of criminal justice services along with
38 a copy of the accusatory instrument.

39 § 10. The opening paragraph of subdivision 3 of section 70.30 of the
40 penal law, as amended by chapter 3 of the laws of 1995, is amended to
41 read as follows:

42 The term of a definite sentence, a determinate sentence, or the maxi-
43 mum term of an indeterminate sentence imposed on a person shall be cred-
44 ited with and diminished by the amount of time the person spent in
45 custody prior to the commencement of such sentence as a result of the
46 charge that culminated in the sentence. In the case of an indeterminate
47 sentence, if the minimum period of imprisonment has been fixed by the
48 court or by the board of parole, the credit shall also be applied
49 against the minimum period. The credit herein provided shall be calcu-
50 lated from the date custody under the charge commenced to the date the
51 sentence commences and shall not include any time that is credited
52 against the term or maximum term of any previously imposed sentence or
53 period of post-release supervision to which the person is subject. Where
54 the charge or charges culminate in more than one sentence, the credit
55 shall be applied as follows:

Page 5

1 § 11. Subdivision 5 of section 70.30 of the penal law is amended to
2 read as follows:

3 5. Time served under vacated sentence. When a sentence of imprisonment
4 that has been imposed on a person is vacated and a new sentence is
5 imposed on such person for the same offense, or for an offense based
6 upon the same act, the new sentence shall be calculated as if it had
7 commenced at the time the vacated sentence commenced, and all time cred-
8 ited against the vacated sentence shall be credited against the new
9 sentence. In any case where a vacated sentence also includes a period
10 of post-release supervision, all time credited against the period of
11 post-release supervision shall be credited against the period of post-
12 release supervision included with the new sentence. In the event a peri-
13 od of post-release supervision is not included with the new sentence,
14 such period shall be credited against the new sentence.

15 § 12. Paragraph (b) of subdivision 1 of section 70.40 of the penal
16 law, as amended by chapter 3 of the laws of 1995, is amended to read as
17 follows:

18 (b) A person who is serving one or more than one indeterminate or
19 determinate sentence of imprisonment shall, if he so requests, be condi-
20 tionally released from the institution in which he is confined when the
21 total good behavior time allowed to him, pursuant to the provisions of
22 the correction law, is equal to the unserved portion of his term, maxi-
23 mum term or aggregate maximum term; provided, however, that (i) in no
24 event shall a person serving one or more indeterminate sentence of
25 imprisonment and one or more determinate sentence of imprisonment which
26 run concurrently be conditionally released until serving at least six-
27 sevenths of the determinate term of imprisonment which has the longest
28 unexpired time to run and (ii) in no event shall a person be condi-
29 tionally released prior to the date on which such person is first eligi-
30 ble for discretionary parole release. The conditions of release, includ-
31 ing those governing post-release supervision, shall be such as may be
32 imposed by the state board of parole in accordance with the provisions
33 of the executive law.

34 Every person so released shall be under the supervision of the state
35 board of parole for a period equal to the unserved portion of the term,
36 maximum term, [or] aggregate maximum term, or period of post-release
37 supervision.

38 § 13. Paragraph (a) of subdivision 3 of section 70.40 of the penal law
39 is amended to read as follows:

40 (a) When a person [has] is alleged to have violated the terms of [his]
41 parole and the state board of parole has declared such person to be
42 delinquent, the declaration of delinquency shall interrupt the person's
43 sentence as of the date of the delinquency and such interruption shall
44 continue until the return of the person to an institution under the
45 jurisdiction of the state department of [correction] correctional
46 services.

47 § 14. Paragraph (b) of subdivision 3 of section 70.40 of the penal
48 law, as amended by chapter 79 of the laws of 1989, is amended to read as
49 follows:

50 (b) When a person [has] is alleged to have violated the terms of his
51 conditional release or post-release supervision and has been declared
52 delinquent by the board having supervision over such person or the local
53 conditional release commission, the declaration of delinquency shall
54 interrupt the period of supervision or post-release supervision as of
55 the date of the delinquency [and]. For a conditional releasee, such
56 interruption shall continue until the return of the person to the local

Page 6

1 correctional facility located in the jurisdiction of the commission
2 having custody of such person or, if he was released from an institution
3 under the jurisdiction of the state department of correctional services,
4 to an institution under the jurisdiction of that department. Upon such
5 return, the person shall resume service of his sentence. For a person
6 released to post-release supervision, the provisions of section 70.45
7 shall apply.

8 § 15. The penal law is amended by adding a new section 70.45 to read
9 as follows:

10 § 70.45 Determinate sentence: post-release supervision.

11 1. In general. Each determinate sentence also includes, as a part
12 thereof, an additional period of post-release supervision. Such period
13 shall commence as provided in subdivision five of this section and a
14 violation of any condition of supervision occurring at any time during
15 such period of post-release supervision shall subject the defendant to a
16 further period of imprisonment of at least six months and up to the
17 balance of the remaining period of post-release supervision, not to
18 exceed five years. Such maximum limits shall not preclude a longer peri-
19 od of further imprisonment for a violation where the defendant is
20 subject to indeterminate and determinate sentences.

21 2. Period of post-release supervision. The period of post-release
22 supervision for a determinate sentence shall be five years, except that
23 such period shall be three years whenever a determinate sentence of
24 imprisonment is imposed pursuant to section 70.02 of this article upon a
25 conviction for a class D or class E violent felony offense; provided,
26 however, that when a determinate sentence is imposed pursuant to section
27 70.02 of this article, the court, at the time of sentence, may specify a
28 shorter period of post-release supervision of not less than two and
29 one-half years upon a conviction for a class B or class C violent felony
30 offense and a shorter period of post-release supervision of not less
31 than one and one-half years upon a conviction for a class D or class E
32 violent felony offense.

33 3. Conditions of post-release supervision. The board of parole shall
34 establish and impose conditions of post-release supervision in the same
35 manner and to the same extent as it may establish and impose conditions
36 in accordance with the executive law upon persons who are granted parole
37 or conditional release; provided that, notwithstanding any other
38 provision of law, the board of parole may impose as a condition of post-
39 release supervision that for a period not exceeding six months imme-
40 diately following release from the underlying term of imprisonment the
41 person be transferred to and participate in the programs of a residen-
42 tial treatment facility as that term is defined in subdivision six of
43 section two of the correction law. Upon release from the underlying term
44 of imprisonment, the person shall be furnished with a written statement
45 setting forth the conditions of post-release supervision in sufficient
46 detail to provide for the person's conduct and supervision.

47 4. Revocation of post-release supervision. An alleged violation of any
48 condition of post-release supervision shall be initiated, heard and
49 determined in accordance with the provisions of subdivisions three and
50 four of section two hundred fifty-nine of the executive law.

51 5. Calculation of service of period of post-release supervision. A
52 period or periods of post-release supervision shall be calculated and
53 served as follows:

54 (a) A period of post-release supervision shall commence upon the
55 person's release from imprisonment to supervision by the division of
56 parole and shall interrupt the running of the determinate sentence or

Page 7

1 sentences of imprisonment and the indeterminate sentence or sentences of
 2 imprisonment, if any. The remaining portion of any maximum or aggregate
 3 maximum term shall then be held in abeyance until the successful
 4 completion of the period of post-release supervision or the person's
 5 return to the custody of the department of correctional services, which-
 6 ever occurs first.

7 (b) Upon the completion of the period of post-release supervision, the
 8 running of such sentence or sentences of imprisonment shall resume and
 9 only then shall the remaining portion of any maximum or aggregate maxi-
 10 um term previously held in abeyance be credited with and diminished by
 11 such period of post-release supervision. The person shall then be under
 12 the jurisdiction of the division of parole for the remaining portion of
 13 such maximum or aggregate maximum term.

14 (c) When a person is subject to two or more periods of post-release
 15 supervision, such periods shall merge with and be satisfied by discharge
 16 of the period of post-release supervision having the longest unexpired
 17 time to run; provided, however, any time served upon one period of post-
 18 release supervision shall not be credited to any other period of post-
 19 release supervision except as provided in subdivision five of section
 20 70.30 of this article.

21 (d) When a person is alleged to have violated a condition of post-re-
 22 lease supervision and the division of parole has declared such person to
 23 be delinquent: (i) the declaration of delinquency shall interrupt the
 24 period of post-release supervision; (ii) such interruption shall contin-
 25 ue until the person is restored to post-release supervision; (iii) if
 26 the person is restored to post-release supervision without being
 27 returned to the department of correctional services, any time spent in
 28 custody from the date of delinquency until restoration to post-release
 29 supervision shall first be credited to the maximum or aggregate maximum
 30 term of the sentence or sentences of imprisonment, but only to the
 31 extent authorized by subdivision three of section 70.40 of this article.
 32 Any time spent in custody solely pursuant to such delinquency after
 33 completion of the maximum or aggregate maximum term of the sentence or
 34 sentences of imprisonment shall be credited to the period of post-re-
 35 lease supervision, if any; and (iv) if the person is ordered returned to
 36 the department of correctional services, the person shall be required to
 37 serve a time assessment of at least six months before being re-released
 38 to post-release supervision. In the event the balance of the remaining
 39 period of post-release supervision is six months or less, such time
 40 assessment shall be six months unless a longer period is authorized
 41 pursuant to subdivision one of this section. The time assessment shall
 42 commence upon the issuance of a determination after a final hearing that
 43 the person has violated one or more conditions of supervision. While
 44 -serving such assessment, the person shall not receive any good behavior
 45 allowance pursuant to section eight hundred three of the correction law.
 46 Any time spent in custody from the date of delinquency until return to
 47 the department of correctional services shall first be credited to the
 48 maximum or aggregate maximum term of the sentence or sentences of impri-
 49 sonment, but only to the extent authorized by subdivision three of
 50 section 70.40 of this article. The maximum or aggregate maximum term of
 51 the sentence or sentences of imprisonment shall run while the person is
 52 serving such time assessment in the custody of the department of correc-
 53 tional services. Any time spent in custody solely pursuant to such
 54 delinquency after completion of the maximum or aggregate maximum term of
 55 the sentence or sentences of imprisonment shall be credited to the peri-
 56 od of post-release supervision, if any.

1 (e) Notwithstanding paragraph (d) of this subdivision, in the event a
2 person is sentenced to one or more additional indeterminate or determi-
3 nate term or terms of imprisonment prior to the completion of the period
4 of post-release supervision, such period of post-release supervision
5 shall be held in abeyance and the person shall be committed to the
6 custody of the department of correctional services in accordance with
7 the requirements of the prior and additional terms of imprisonment.
8 (f) When a person serving a period of post-release supervision is
9 returned to the department of correctional services pursuant to an addi-
10 tional consecutive sentence of imprisonment and without a declaration of
11 delinquency, such period of post-release supervision shall be held in
12 abeyance while the person is in the custody of the department of correc-
13 tional services. Such period of post-release supervision shall resume
14 running upon the person's re-release.
15 § 18. Subdivision 2 of section 259-a of the executive law, as added by
16 chapter 904 of the laws of 1977, is amended to read as follows:
17 2. The division shall cause complete records to be kept of every
18 person on parole [or], conditional release or post-release supervision.
19 Such records shall contain the aliases and photograph of each such
20 person, and the other information referred to in subdivision one of this
21 section, as well as all reports of parole officers in relation to such
22 persons. Such records shall be maintained by the division and may be
23 made available as deemed appropriate by the chairman for use by the
24 department of correctional services, the division, and the board of
25 parole. Such records shall be organized in accordance with methods of
26 filing and indexing designed to insure the immediate availability of
27 complete information about such persons.
28 § 17. Subdivision 4 of section 259-a of the executive law, as amended
29 by chapter 79 of the laws of 1989, is amended to read as follows:
30 4. In accordance with the provisions of this chapter, the division
31 shall supervise inmates released on parole or conditional release, or to
32 post-release supervision, except that the division may consent to the
33 supervision of a released inmate by the United States parole commission
34 pursuant to the witness security act of nineteen hundred eighty-four.
35 § 18. Subdivision 5 of section 259-a of the executive law, as added by
36 chapter 904 of the laws of 1977, is amended to read as follows:
37 5. The division shall conduct such investigations as may be necessary
38 in connection with alleged violations of parole [or], conditional
39 release or post-release supervision.
40 § 19. Subdivision 6 of section 259-a of the executive law, as added by
41 chapter 904 of the laws of 1977, is amended to read as follows:
42 6. The division shall assist inmates eligible for parole or condi-
43 tional release and inmates who are on parole [or], conditional release
44 or post-release supervision to secure employment, educational or voca-
45 tional training.
46 § 20. Subdivision 8 of section 259-a of the executive law, as amended
47 by chapter 451 of the laws of 1984, is amended to read as follows:
48 8. The division may establish a parole transition program which is
49 hereby defined as community-based residential facilities designed to aid
50 parole [and], conditional release or post-release supervision violators
51 develop an increased capacity for adjustment to community living. Paro-
52 lees [and], conditional releasees and those under post-release super-
53 vision who have either (i) been found pursuant to section two hundred
54 fifty-nine-i of this article to have violated one or more conditions of
55 release in an important respect, or (ii) who have allegedly violated one
56 or more of such conditions upon a finding of probable cause at a prelim-

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THE LEGAL AID SOCIETY

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Page 2

1 inary hearing or upon the waiver thereof may be placed in a parole tran-
 2 sition facility. Placement in a parole transition facility upon a find-
 3 ing of probable cause or the waiver thereof shall not preclude the
 4 conduct of a revocation hearing, nor, absent a waiver, operate to deny
 5 the releasee's right to such revocation hearing.

6 § 21. Paragraph (a) of subdivision 9 of section 259-a of the execu-
 7 tive law, as added by chapter 55 of the laws of 1992, is amended to read
 8 as follows:

9 (a) The division shall collect a fee of thirty dollars per month,
 10 from all persons over the age of eighteen who after the effective date
 11 of this subdivision are supervised on parole ~~[or]~~ conditional release
 12 or post-release supervision by the division. The division shall waive
 13 all or part of such fee where, because of the indigence of the offender,
 14 the payment of said fee would work an unreasonable hardship on the
 15 person convicted, his or her immediate family, or any other person who
 16 is dependent on such person for financial support.

17 § 22. Subdivision 2 of section 259-c of the executive law, as amended
 18 by chapter 3 of the laws of 1995, is amended to read as follows:

19 2. have the power and duty of determining the conditions of release
 20 of the person who may be conditionally released or subject to a period
 21 of post-release supervision under an indeterminate or determinate
 22 sentence of imprisonment;

23 § 23. Subdivision 6 of section 259-c of the executive law, as added
 24 by chapter 904 of the laws of 1977, is amended to read as follows:

25 6. have the power to revoke the parole ~~[or]~~ conditional release or
 26 post-release supervision status of any person and to authorize the issu-
 27 ance of a warrant for the re-taking of such persons;

28 § 24. Section 259-e of the executive law, as amended by chapter 34 of
 29 the laws of 1985, is amended to read as follows:

30 § 259-e. Institutional parole services. The division shall provide
 31 institutional parole services. Subject to the authority of the chair-
 32 man, these shall include preparation of reports and other data required
 33 by the state board of parole in the exercise of its functions with
 34 respect to release on parole ~~[and]~~ conditional release or post-release
 35 supervision of inmates. Employees of the division who collect data,
 36 interview inmates and prepare reports for the state board of parole in
 37 institutions under the jurisdiction of the department of correctional
 38 services shall not work under the direct or indirect supervision of
 39 head of the institution.

40 § 25. Subdivision 1 of section 259-f of the executive law, as amended
 41 by chapter 34 of the laws of 1985, is amended to read as follows:

42 1. Employees in the division who perform the duties of supervising
 43 inmates released on parole ~~[or]~~ conditional release or post-release
 44 supervision, and employees who perform professional duties in insti-
 45 tutions and who are assigned to provide institutional parole services
 46 pursuant to section two hundred fifty-nine-e of this article, shall be
 47 parole officers.

48 § 26. Paragraph (b) of subdivision 2 of section 259-i of the execu-
 49 tive law, as amended by chapter 230 of the laws of 1986, is amended to
 50 read as follows:

51 (b) Persons paroled ~~[and]~~ conditionally released or released to
 52 post-release supervision from an institution under the jurisdiction of
 53 the department of correctional services or the department of mental
 54 hygiene shall, while on parole ~~[or]~~ conditional release or post-release
 55 supervision, be in the legal custody of the division of parole until
 56 expiration of the maximum term or period of sentence, or expiration of

1 the period of supervision, including any period of post-release super-
2 vision, or return to the custody of the department of correctional
3 services, as the case may be.

4 § 27. The subdivision heading of subdivision 3 of section 259-i of
5 the executive law, as added by chapter 904 of the laws of 1977, is
6 amended to read as follows:

7 Revocation of parole (and) conditional release and post-release
8 supervision.

9 § 28. Subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivi-
10 sion 3 of section 259-i of the executive law, subparagraph (i) as
11 amended by chapter 3 of the laws of 1995, subparagraph (ii) as amended
12 by chapter 262 of the laws of 1987 and subparagraph (iii) as amended by
13 chapter 843 of the laws of 1980, are amended to read as follows:

14 (i) If the parole officer having charge of a paroled or conditionally
15 released person or a person released to post-release supervision or a
16 person received under the uniform act for out-of-state parolee super-
17 vision shall have reasonable cause to believe that such person has
18 lapsed into criminal ways or company, or has violated one or more condi-
19 tions of his parole, conditional release or post-release supervision,
20 such parole officer shall report such fact to a member of the board of
21 parole, or to any officer of the division designated by the board, and
22 thereupon a warrant may be issued for the retaking of such person and
23 for his temporary detention in accordance with the rules of the board.
24 The retaking and detention of any such person may be further regulated
25 by rules and regulations of the division not inconsistent with this
26 article. A warrant issued pursuant to this section shall constitute
27 sufficient authority to the superintendent or other person in charge of
28 any jail, penitentiary, lockup or detention pen to whom it is delivered
29 to hold in temporary detention the person named therein; except that a
30 warrant issued with respect to a person who has been released on medical
31 parole pursuant to section two hundred fifty-nine-r of this article and
32 whose parole is being revoked pursuant to paragraph (h) of subdivision
33 four of such section shall constitute authority for the immediate place-
34 ment of the parolee only into the custody of the department of correc-
35 tional services to hold in temporary detention. A warrant issued pursu-
36 ant to this section shall also constitute sufficient authority to the
37 person in charge of a drug treatment campus, as defined in subdivision
38 twenty of section two of the correction law, to hold the person named
39 therein, in accordance with the procedural requirements of this section,
40 for a period of at least ninety days to complete an intensive drug
41 treatment program mandated by the board of parole as an alternative to
42 parole or conditional release revocation, or the revocation of post-re-
43 lease supervision, and shall also constitute sufficient authority for
44 return of the person named therein to local custody to hold in temporary
45 detention for further revocation proceedings in the event said person
46 does not successfully complete the intensive drug treatment program.
47 The board's rules shall provide for cancellation of delinquency and
48 restoration to supervision upon the successful completion of the
49 program.

50 (ii) Whenever a paroled or conditionally released person or a person
51 under post-release supervision or a prisoner received under the uniform
52 act for out-of-state parolee supervision has, pursuant to this para-
53 graph, been placed in any county jail or penitentiary, or a city prison
54 operated by a city having a population of one million or more inhabit-
55 ants, the state shall pay to the city or county operating such facility
56 the actual per day per capita cost as certified to the state commission-

1 er of correctional services by the appropriate local official for the
 2 care of such person and as approved by the director of the budget. The
 3 reimbursement rate shall not, however, exceed thirty dollars per day per
 4 capita and forty dollars per day per capita on and after the first day
 5 of April, nineteen hundred eighty-eight.

6 (iii) A warrant issued for a parole [or], a conditional release or a
 7 post-release supervision violator may be executed by any parole officer
 8 or any officer authorized to serve criminal process or any peace offi-
 9 cer, who is acting pursuant to his special duties, or police officer.
 10 Any such officer to whom such warrant shall be delivered is authorized
 11 and required to execute such warrant by taking such person and having
 12 him detained as provided in this paragraph.

13 § 29. Paragraph (b) of subdivision 3 of section 259-i of the execu-
 14 tive law, as added by chapter 904 of the laws of 1977, is amended to
 15 read as follows:

16 (b) A person who shall have been taken into custody pursuant to this
 17 subdivision for violation of one or more conditions of parole [or],
 18 conditional release or post-release supervision shall, insofar as prac-
 19 ticable, be incarcerated in the county or city in which the arrest
 20 occurred.

21 § 30. Subparagraphs (i), (ii), (iii) and (iv) of paragraph (c) of
 22 subdivision 3 of section 259-i of the executive law, subparagraph (i) as
 23 amended by chapter 413 of the laws of 1984, subparagraphs (ii) and (iv)
 24 as added by chapter 904 of the laws of 1977 and subparagraph (iii) as
 25 amended by chapter 432 of the laws of 1989, are amended to read as
 26 follows:

27 (i) Within fifteen days after the warrant for retaking and temporary
 28 detention has been executed, unless the releasee has been convicted of a
 29 new crime committed while under [his present] parole [or], conditional
 30 release or post-release supervision, the board of parole shall afford
 31 the alleged parole [or], conditional release or post-release supervision
 32 violator a preliminary revocation hearing before a hearing officer
 33 designated by the board of parole. Such hearing officer shall not have
 34 had any prior supervisory involvement over the alleged violator.

35 (ii) The preliminary parole [or], conditional release or post-release
 36 supervision revocation hearing shall be conducted at an appropriate
 37 correctional facility, or such other place reasonably close to the area
 38 in which the alleged violation occurred as the board may designate.

39 (iii) The alleged violator shall, within three days of the execution
 40 of the warrant, be given written notice of the time, place and purpose
 41 of the hearing unless he is detained pursuant to the provisions of
 42 subparagraph (iv) of paragraph (a) of this subdivision. In those
 43 instances, the alleged violator will be given written notice of the
 44 time, place and purpose of the hearing within five days of the execution
 45 of the warrant. The notice shall state what conditions of parole [or],
 46 conditional release or post-release supervision are alleged to have been
 47 violated, and in what manner; that such person shall have the right to
 48 appear and speak in his own behalf; that he shall have the right to
 49 introduce letters and documents; that he may present witnesses who can
 50 give relevant information to the hearing officer; that he has the right
 51 to confront the witnesses against him. Adverse witnesses may be
 52 compelled to attend the preliminary hearing unless the prisoner has been
 53 convicted of a new crime while on supervision or unless the hearing
 54 officer finds good cause for their non-attendance.

55 (iv) The preliminary hearing shall be scheduled to take place no
 56 later than fifteen days from the date of execution of the warrant. The

1 standard of proof at the preliminary hearing shall be probable cause to
 2 believe that the parolee ~~[or], conditional releasee or person under~~
 3 post-release supervision has violated one or more conditions of his
 4 parole ~~[or], conditional release or post-release supervision~~ in an
 5 important respect. Proof of conviction of a crime committed ~~[subsequent~~
 6 ~~to release on parole or conditional release]~~ while under supervision
 7 shall constitute probable cause for the purposes of this section.

8 § 31. Subparagraph (vi) of paragraph (c) of subdivision 3 of section
 9 259-i of the executive law, as added by chapter 904 of the laws of 1977,
 10 is amended to read as follows:

11 (vi) At the conclusion of the preliminary hearing, the hearing offi-
 12 cer shall inform the alleged violator of his decision as to whether
 13 there is probable cause to believe that the parolee ~~[or], conditional~~
 14 ~~releasee or person on post-release supervision~~ has violated one or more
 15 conditions of his release in an important respect. Based solely on the
 16 evidence adduced at the hearing, the hearing officer shall determine
 17 whether there is probable cause to believe that such person has violated
 18 his parole ~~[or], conditional release or post-release supervision~~ in an
 19 important respect. The hearing officer shall in writing state the
 20 reasons for his determination and the evidence relied on. A copy of the
 21 written findings shall be sent to both the alleged violator and his
 22 counsel.

23 § 32. Paragraph (d) of subdivision 3 of section 259-i of the execu-
 24 tive law, as amended by chapter 3 of the laws of 1995, is amended to
 25 read as follows:

26 (d) If a finding of probable cause is made pursuant to this subdivi-
 27 sion either by a determination at a preliminary hearing or by the waiver
 28 thereof, or if the releasee has been convicted of a new crime while
 29 under ~~[his present] parole [or], conditional release or post-release~~
 30 supervision, the board's rules shall provide for (i) declaring such
 31 person to be delinquent as soon as practicable and shall require reason-
 32 able and appropriate action to make a final determination with respect
 33 to the alleged violation or (ii) ordering such person to be restored to
 34 parole, conditional release or post-release supervision under such
 35 circumstances as it may deem appropriate or (iii) when a parolee ~~[or],~~
 36 ~~conditional releasee or person on post-release supervision~~ has been
 37 convicted of a new felony committed while under ~~[his present parole or~~
 38 ~~conditional release]~~ such supervision and a new indeterminate or deter-
 39 minate sentence has been imposed, the board's rules shall provide for a
 40 final declaration of delinquency. The inmate shall then be notified in
 41 writing that his release has been revoked on the basis of the new
 42 conviction and a copy of the commitment shall accompany said notifica-
 43 tion. The inmate's next appearance before the board shall be governed by
 44 the legal requirements of said new indeterminate or determinate
 45 sentence, or shall occur as soon after a final reversal of the
 46 conviction as is practicable.

47 § 33. Subparagraph (iv) of paragraph (f) of subdivision 3 of section
 48 259-i of the executive law, as added by chapter 904 of the laws of 1977,
 49 is amended to read as follows:

50 (iv) The alleged violator shall be given written notice of the rights
 51 enumerated in subparagraph (iii) of paragraph (c) of this subdivision as
 52 well as of his right to present mitigating evidence relevant to restora-
 53 tion to parole, conditional release or post-release supervision and his
 54 right to counsel.

1 § 34. Subparagraph (vi) of paragraph (f) of subdivision 3 of section
2 259-i of the executive law, as added by chapter 904 of the laws of 1977,
3 is amended to read as follows:

4 (vi) At the revocation hearing, the charges shall be read and the
5 alleged violator shall be permitted to plead not guilty, guilty, guilty
6 with explanation or to stand mute. As to each charge, evidence shall be
7 introduced through witnesses and documents, if any, in support of that
8 charge. At the conclusion of each witness's direct testimony, he shall
9 be made available for cross-examination. If the alleged violator
10 intends to present a defense to the charges or to present evidence of
11 mitigating circumstances, the alleged violator shall do so after presen-
12 tation of all the evidence in support of a violation of parole, condi-
13 tional release or post-release supervision.

14 § 35. Subparagraph (ix) of paragraph (f) of subdivision 3 of section
15 259-i of the executive law, as added by chapter 904 of the laws of 1977,
16 is amended to read as follows:

17 (ix) If the presiding officer is not satisfied that there is a prepon-
18 derance of evidence in support of the violation, he shall dismiss the
19 violation, cancel the delinquency and restore the [parolee or condi-
20 tional releasee] person to parole, conditional release or post-release
21 to supervision.

22 § 36. Subparagraphs (x) and (xi) of paragraph (f) of subdivision 3 of
23 section 259-i of the executive law, as amended by chapter 166 of the
24 laws of 1991, are amended to read as follows:

25 (x) If the presiding officer is satisfied that there is a preponder-
26 ance of evidence that the alleged violator violated one or more condi-
27 tions of release in an important respect, he or she shall so find.
28 ~~[The] For each violation so found, the presiding officer may (A) direct~~
29 ~~[the violator's reincarceration and fix a date for consideration by the~~
30 ~~board for re-release on parole or conditional release, as the case may~~
31 ~~be; (B) as an alternative to reincarceration, direct the violator's~~
32 ~~placement in a parole transition facility for a period not to exceed one~~
33 ~~hundred eighty days and subsequent restoration to supervision; or (C)~~
34 ~~direct that the parolee or conditional releasee be restored to super-~~
35 ~~vision] that the parolee, conditional releasee or person serving a peri-~~
36 ~~od of post-release supervision be restored to supervision; (B) as an~~
37 ~~alternative to reincarceration, direct the parolee, conditional releasee~~
38 ~~or person serving a period of post-release supervision be placed in a~~
39 ~~parole transition facility for a period not to exceed one hundred eighty~~
40 ~~days and subsequent restoration to supervision; (C) in the case of paro-~~
41 ~~lees or conditional releasees, direct the violator's reincarceration and~~
42 ~~fix a date for consideration by the board for re-release on parole or~~
43 ~~conditional release, as the case may be; or (D) in the case of persons~~
44 ~~released to a period of post-release supervision, direct the violator's~~
45 ~~reincarceration for a period of at least six months and up to the~~
46 ~~balance of the remaining period of post-release supervision, not to~~
47 ~~exceed five years. Where a date has been fixed for the violator's~~
48 ~~re-release on parole or conditional release, as the case may be, the~~
49 ~~board or board member may waive the personal interview between a member~~
50 ~~or members of the board and the violator to determine the suitability~~
51 ~~for re-release; provided, however, that the board shall retain the~~
52 ~~authority to suspend the date fixed for re-release and to require a~~
53 ~~personal interview based on the violator's institutional record or on~~
54 ~~such other basis as is authorized by the rules and regulations of the~~
55 ~~board. If an interview is required, the board shall notify the violator~~
56 ~~of the time of such interview in accordance with the rules and regu-~~

lations of the board. If the violator is placed in a parole transition facility or restored to supervision, the presiding officer may impose such other conditions of parole [or], conditional release, or post-release supervision as he may deem appropriate, as authorized by rules of the board.

(xi) If the presiding officer sustains any violations, he must prepare a written statement, to be made available to the alleged violator and his counsel, indicating the evidence relied upon and the reasons for revoking parole, conditional release or post-release supervision, and for the disposition made.

§ 37. Paragraph (g) of subdivision 3 of section 259-i of the executive law, as added by chapter 904 of the laws of 1977, is amended to read as follows:

(g) Revocation of parole [or], conditional release or post-release supervision shall not prevent re-parole or re-release provided such re-parole or re-release is not inconsistent with any other provisions of law.

§ 38. Paragraph (i) of subdivision 3 of section 259-i of the executive law, as added by chapter 412 of the laws of 1980, is amended to read as follows:

(i) Where there is reasonable cause to believe that a parolee [or], conditional releasee or person under post-release supervision has absconded from supervision the board may declare such person to be delinquent. This paragraph shall not be construed to deny such person a preliminary revocation hearing upon his retaking, nor to relieve the division of parole of any obligation it may have to exercise due diligence to retake the alleged absconder, nor to relieve the parolee or releasee of any obligation he may have to comply with the conditions of his release.

§ 39. Paragraph (a) of subdivision 4 of section 259-i of the executive law, as added by chapter 904 of the laws of 1977, is amended to read as follows:

(a) Except for determinations made upon preliminary hearings upon allegations of violation of parole [or], conditional release or post-release supervision, all determinations made pursuant to this section may be appealed in accordance with rules promulgated by the board. Any board member who participated in the decision from which an appeal is taken may not participate in the resolution of that appeal. The rules of the board may specify a time within which any appeal shall be taken and resolved.

§ 40. Section 259-j of the executive law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

§ 259-j. Discharge from parole and conditional release. [(h) Except where a determinate sentence or a sentence with a maximum term of life imprisonment was imposed for a felony other than a felony defined in article two hundred twenty of the penal law, if the board of parole is satisfied that an absolute discharge from parole or from conditional release is in the best interests of society, the board may grant such a discharge prior to the expiration of the full term or maximum term to any person who has been on unrevoked parole or conditional release for at least three consecutive years. A discharge granted under this section shall constitute a termination of the sentence with respect to which it was granted. No such discharge shall be granted unless the board of parole is satisfied that the parolee, otherwise financially able to comply with an order of restitution and the payment of any

1 mandatory surcharge previously imposed by a court of competent jurisdic-
2 tion, has made a good faith effort to comply therewith.

3 § 41. Section 380.50 of the criminal procedure law is amended by
4 adding two new subdivisions 4 and 5 to read as follows:

5 4. Regardless of whether the victim requests to make a statement with
6 regard to the defendant's sentence, where the defendant is committed to
7 the custody of the department of correctional services, upon a sentence
8 of imprisonment for conviction of a violent felony offense as defined in
9 section 70.02 of the penal law or a felony defined in article one
10 hundred twenty-five of such law, within sixty days of the imposition of
11 sentence the prosecutor shall provide the victim with a form, prepared
12 and distributed by the commissioner of the department of correctional
13 services, on which the victim may indicate a demand to be informed of
14 the escape, absconding, discharge, parole, conditional release or
15 release to post-release supervision of the person so imprisoned. If the
16 victim submits a completed form to the prosecutor, it shall be the duty
17 of the prosecutor to mail promptly such form to the department of
18 correctional services.

19 5. Following the receipt of such form from the prosecutor, it shall
20 be the duty of the department of correctional services, at the time such
21 person is discharged, paroled, conditionally released or released to
22 post-release supervision, to notify the victim of such occurrence by
23 certified mail directed to the address provided by the victim. In the
24 event such person escapes or absconds from a facility under the juris-
25 diction of the department of correctional services, it shall be the duty
26 of such department to notify immediately the victim of such occurrence
27 at the most current address or telephone number provided by the victim
28 in the most reasonable and expedient possible manner. In the event such
29 escapee or absconder is subsequently taken into custody by the depart-
30 ment of correctional services, it shall be the duty of such department
31 to notify the victim of such occurrence by certified mail directed to
32 the address provided by the victim within forty-eight hours of regaining
33 such custody. In no case shall the state be held liable for failure to
34 provide any notice required by this subdivision.

35 § 42. Notwithstanding any other provision of law, by January 1, 1999,
36 the department of correctional services shall establish an automated
37 telephone system that a victim, family member of a victim, a witness or
38 any member of the general public may call to obtain information relating
39 to the crime and sentence of an inmate who is serving a determinate or
40 indeterminate sentence of imprisonment. The department of correctional
41 services, in consultation with the department of motor vehicles, shall
42 also develop a public awareness campaign and disseminate information
43 regarding the availability of the automated telephone system in conjunc-
44 tion with licensing and motor vehicle registration, application and
45 renewal procedures of the department of motor vehicles. In addition, by
46 April 1, 1999, the division of parole, in cooperation with the depart-
47 ment of correctional services, shall implement a program to provide a
48 victim, family member of a victim, a witness, or any member of the
49 general public with access to information concerning the community of
50 residence of a person who has been paroled, conditionally released or
51 released to post-release supervision and the address and telephone
52 number of the regional parole office to which such person has been
53 assigned.

54 § 43. Section 149-a of the correction law is REPEALED.

55 § 44. This act shall take effect immediately; provided, however that
56 sections one through thirty-nine of this act shall apply to offenses

Page 16

1 committed on or after September 1, 1998, offenses committed prior to
2 such date shall be governed by the provisions of law in effect at the
3 time the offense was committed; provided, however, that nothing
4 contained herein shall be deemed to affect the application, qualifica-
5 tion, expiration, reversion or repeal of any provision of law amended by
6 any section of this act and the provisions of this act shall be applied
7 or qualified or shall expire or revert or be deemed repealed in the same
8 manner, to the same extent and on the same date as the case may be as
9 otherwise provided by law.

REPEAL NOTE.—Section eight of this act repeals subdivision 4 of
section 70.02 of the penal law, relating to indeterminate sentencing of
violent felony offenders. Section forty-three of this act repeals
section 149-a of the correction law, relating to victim notification of
certain inmate releases.

1998 FELONY SENTENCING (POST SERRA'S LAW)

FELONY & SENTENCING STATUS	Life No Death Penalty Prison	Yer ¹	Yes ²	INDETERMINATE SENTENCES	DETERMINATE TERM	Stripped Probation or Parole?	"Safe" Act, Death Penalty (up to 1 yr), Civil Inmate or Indeterminate	VIA LIMITATIONS See C.S.L. §28A-19
Murder I		Yer ¹	Yes ²	Min 20-life; Max 25- life ³	NO	NO	NO	C VFO
All other A-I Felonies & all Persistent non-violent felons				Min: 15-life Max: 25- life ⁴	NO	NO	NO	Art. 220-Wild YO-B Art. 220-Juv YO-A-II Non-Drug-C VFO
A-II Felonies				Min 3-life Max 8½-life ⁵	NO	LIFETIME if Art. 270 & def.	NO	Art. 220: B Felony
A-II Predicate Felonies				Min sent: 6-life Max sent: 12½-life ⁶	NO	provides Material Ann. ⁷	NO	
B Felony Non-Predicate, Non-VFO				Min 1-3; Max 8½-25 ¹⁰ except PL 220.44(2) min. is 2-6 yrs.	NO		NO	If the top count is a B AFO, the minimum plea must be to a class C VFO.
B VFO ¹¹ , Non-predicate				Crime before 10/1/93: Min: 2-6; Max: 8½-25 yrs. ¹² If AFO 6½ yrs. ¹³ On or after 10/1/93: Min 3-6; Max 12½-25 ¹⁴	Crime on or after 9/1/93 (Determinative not mandatory for certain documents - above thresholds) ¹⁵ 1½ls. Term: 5 yrs. Max Term: 25 yrs. ¹⁶ If Whole or ½ yrs + ½ ¹⁷ plus from 2¼ to 5 yrs post-release supervy sc ¹⁸ C.U. Firearm 1 st add a 5 yr equant. sentence. ¹⁹	NO	NO	If the top count is a B VFO, the minimum plea must be to a class D VFO.
B Predicate felon; current conviction is not a VFO				Min: 4½-9 years; Max: 12½-25 yrs. ²⁰	NO		LIFETIME if Art. 220 ²¹	Art. 220 cases, the minimum plea is to a D Felony.
D Predicate; First conviction is not a VFO, current is a VFO				Crime before 10/1/93: Min: 4½-9 yrs. Max: 12½-25 yrs. ²²	On or after 10/1/93 Min. Term: 8 yrs. Max Term: 25 yrs. ²³ If crime on or after 9/1/98 add from 2¼ to 5 yrs post-release supervision ²⁴	NO	NO	
B Predicate Violent				Crime before 10/1/93: Min: 6-12 years; Max: 12½ to 25. ²⁵	On or after 10/1/93 Min Term 10 yrs; Max Term: 25 yrs. Whole or ½ yrs only. ²⁶ If crime on or after 9/1/98 add from 2¼ to 5 yrs post-release supervision ²⁷	NO	NO	All other B Felonies, the minimum plea is to an E Felony
B Persistent Violent Felony Offender, (Mandatory)				Crime before 10/1/93: Min 10-life; Max 25-life ²⁸ On or after 10/1/93: Min 20-life; Max 25-life ²⁹	No		NO	
B Non-Violent Persistent				(Discretionary); See sentencing range for all other A-I Missing above PL §78.10(2)				

P. 1 of 2

- [illegible]

1998 FELONY SENTENCING (POST JEANAS LAW) P.2 of 2

FELONY & SENTENCING STATUS	INDETERMINATE SENTENCES	DETERMINATE TERM	Straight Probation	'Split' Sent. Probation Term (up to 1 yr), Cond. Disch. or Intermittent	FLA LIMITATIONS See CPL §20.10
C Felony Non-Predicate Non-VFO	If imposed, Min: 1-3 yrs; Max: 5-15; ¹⁴ Certain non-VFO C "Specified" felonies ¹⁵ have a mandatory, indeterminate sent.	NO	YES, except "Specified" C Fel. 60.05(4)	No intermittent for any C Fel. C.F. & C.S.C. can get a "split" or definite sent. All other C "Specified" Fel. must get an indeterminate sent. For all other non-VFOs all sentences herein allowed	C AFO or VFO, the minimum plea must be to at least a D VFO. All other C Felonies no downward limit except predicate felons who must plead guilty to at least an E felony
C VFO, ¹⁶ Non-Predicate	Crime before 10/1/95 Min 1 1/4-4 1/2; Max 5-15 ¹⁷ On or after 10/1/95 Min: 2 1/4-4 1/2 yrs Max: 7 1/4-15 yrs ¹⁸	If crime on or after 9/1/98 (Determine not mandatory for certain domestic abuse situations) ¹⁹ Min Term: 3 1/4 yrs. Max Term: 15 yrs. ²⁰ Whole or half yrs only. ²¹ Plus from 2 1/4 to 5 yrs post-release supervis.	NO	NO	
C Pred. current conv. not a VFO	Min 3-6; Max 7 1/4-15 yrs ²²	NO	NO	NO	
C Predicate; Prior conviction not a VFO, current conviction is a VFO	Crime before 10/1/95 Min: 3-6 yrs Max: 7 1/4-15 yrs ²³	On or after 10/1/95 Min. Term: 5 yrs; Max Term: 15 yrs. ²⁴ If crime on or after 9/1/98 add from 2 1/4 to 5 yrs. post-release supervision. ²⁵	NO	NO	All Predicate Felons must plead guilty to a felony
C Predicate Violent	Crime before 10/1/95 Min: 4-8 yrs Max: 7 1/4-15 yrs ²⁶	On or after 10/1/95 Min Term: 7 yrs; Max Term: 15 yrs. Whole or half yrs only. ²⁷ If crime on or after 9/1/98, add from 2 1/4 to 5 yrs post-release supervision. ²⁸	NO	NO	
C Persistent Violent Felony Offender, (Mandatory)	Crime before 10/1/95 Min: 8-16 Max: 25-36 ²⁹ On or after 10/1/95 Min 16-36 Max 25-36 ³⁰	NO	NO	NO	
C Non-VFO Persistent	(Discretionary): See all other A-1 felonies above, PL §70.10(2).				
D Felony, Non-Predicate, Non-VFO	Min: 1-3 yrs. Max: 2 1/4-7 yrs ³¹	NO	YES except AFO/Prox. Proc. 2 ³²	YES however no Cond. Disch. is permitted for AFO/Prox. Proc. 2 ³³	If no count is 265.02(4) If def. has A mind conv. within 5 yrs, def. must plead guilty to a D or E VFO. If def. doesn't have A mind conv. within 5 yrs, def. can plead to an E VFO or PL 265.01(1) If no count is 265.02(5) or 265.1 def. must plea to D or E VFO 220.10(5)(iv).
D VFO, ³⁴ Non-Predicate, (except Handgun VFOs)	Crime before 10/1/95 Min 1-3; Max 2 1/4-7 ³⁵ On or after 10/1/95 Min 1 1/4-3 Max 3 1/4-7 ³⁶	If crime on or after 9/1/98 (Determine not mandatory for certain domestic abuse situations) ³⁷ Min Term: 2 yrs. Max Term: 7 yrs. ³⁸ Plus from 1 1/4 to 3 yrs post-release supervision. ³⁹	YES except AFO/Am 1 & Am 2 ⁴⁰	YES except no Cond. Disch. for AFO/Am 1 & Am 2. ⁴¹ If originally an AFO, see §44	
D VFO HANDGUNS: Non-predicate; PL § 265.02(4)(c) and C.S.Firearm 2 ⁴²	Crime before 10/1/95 Min: 1-3; Max: 2 1/4-7 ⁴³ On or after 10/1/95 Min: 1 1/4-3 Max 3 1/4-7 ⁴⁴	If crime on or after 9/1/98 (Determine not mandatory for certain domestic abuse situations). ⁴⁵ Min. Term: 2 yrs. Max. Term: 7 yrs. ⁴⁶ Plus from 1 1/4 to 3 yrs post-release supervision.	YES ⁴⁷	YES: However, if the sentence is less than 1 yr, see §45	
D Predicate Felony, current conviction is not a VFO	Min: 2-4 yrs. Max: 3 1/4-7 yrs ⁴⁸ or Parole Supervision ⁴⁹	NO	NO	NO	All Predicate Felons must plead guilty to a felony
D Predicate; Prior conviction not a VFO, current conviction is a VFO	Crime before 10/1/95 Min: 2-4 yrs. Max: 3 1/4-7 yrs. ⁵⁰	On or after 10/1/95 Min. Term: 3 yrs. Max. Term: 7 yrs. ⁵¹ If crime on or after 9/1/98, add 1 1/4 to 3 yrs post-release supervision. ⁵²	NO	NO	
D Predicate Violent	Crime before 10/1/95 Min: 2 1/4-4 yrs. Max: 3 1/4-7 yrs. ⁵³	On or after 10/1/95 Min Term: 5 yrs; Max Term: 7 yrs. Whole or half yrs only. ⁵⁴ If crime on or after 9/1/98, add 1 1/4 to 3 yrs post-release supervision. ⁵⁵	NO	NO	
D Persistent Violent (Mandatory)	Crime before 10/1/95 Min 6-18 Max 25-36 ⁵⁶ On or after 10/1/95 Min 12-36 Max 25-36 ⁵⁷	NO	NO	NO	
D Non-VFO Persistent	(Discretionary): See all other A-1 Felonies above, PL §70.10(2)				
E Non-Predicate Non-VFO ⁵⁸ AND ALL Y.O. SENTENCES ⁵⁹	Min sent: 1-3 yrs. Max: sent: 1 1/4-4 yrs. ⁶⁰	NO	YES	YES	PL 240.22 - E for plea only.
E VFOs Non-Predicate: The only E VFOs are 110/265.02 (4) and 110/265.01 (5)	Crime before 10/1/95 Min: 1-3; Max 1 1/4-4 ⁶¹ On or after 10/1/95 Min: 1 1/4-3; Max: 2-4 yrs. ⁶²	Effective 9/1/98 (Mandatory except for certain domestic abuse situations) ⁶³ Min. Term: 1 1/4 yrs. Max. Term: 4 yrs. ⁶⁴ Plus from 1 1/4 to 3 yrs. post-release supervision. ⁶⁵	YES ⁶⁶	YES: However, if the sentence is less than 1 yr, see §47	If def. has A mind conv. within 5 yrs, def. must plea to an E VFO. If not, def. can plea to the A mind conv. 265.01(1)
E Predicate: Current Conviction is not a VFO	Min 1 1/4-3; Max 2-4 ⁶⁷ or Parole Supervis ⁶⁸ but the min. for Agg. Hsry. by an Inmate is 2 1/4-5 ⁶⁹	NO	NO	NO	All predicate and persistent felons must plead guilty to a felony.
E Predicate: Prior conviction not a VFO, current conviction is a VFO	Crime before 10/1/95 Min: 1 1/4-3 yrs. Max: 2-4 yrs. ⁷⁰	On or after 10/1/95 Min. Term: 2 yrs. Max. Term: 4 yrs. ⁷¹ If crime on or after 9/1/98, add 1 1/4 to 3 yrs post-release supervision. ⁷²	NO	NO	
E Predicate Violent Felony Offender	Crime before 10/1/95: The only possible sentence is 2-4 years ⁷³	On or after 10/1/95 Min Term: 3 yrs. Max Term: 4 yrs. Whole or half yrs only. ⁷⁴ If crime on or after 9/1/98, add 1 1/4 to 3 yrs post-release supervision. ⁷⁵	NO	NO	
E Violent Persistent Felony Offender, Mandatory	The minimum sentence is 2 to life. ⁷⁶	NO	NO	NO	
E non-VFO Persistent Offender	(Discretionary): See all other A-1 felonies above, PL §70.10(2).				
I.O. If J.O. does not receive Y.O. / no Y.O. for a felony	The felonies for which 13, 14 & 15 year club can be prosecuted and sentenced in Supreme Ct. is in PL §70.10(2)				